



To the Honorable Council
City of Norfolk, Virginia

August 29, 2023

From: Nikki Riddick
Director of General Services

Subject: Chrysler Museum Right of Entry -
358 Mowbray, 720 & 740 Botetourt

Reviewed:

A handwritten signature in black ink, appearing to read "Catheryn R. Whitesell".

Catheryn R. Whitesell, Deputy City
Manager

Ward/Superward: 2/6

Approved:

A handwritten signature in blue ink, appearing to read "Patrick Roberts".

Patrick Roberts, City Manager

Item Number: C-12

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Chrysler Museum of Art, Incorporated
1 Memorial Place
Norfolk, VA 23510

III. **Description:**

This docket item is an ordinance approving a Right of Entry from the City to Chrysler Museum permitting Chrysler to enter upon the properties located at 358 Mowbray Arch, 720 Botetourt Street, and 740 Botetourt Street and setting out the parties understanding with respect to the demolition of the office building located at the property.

IV. **Analysis**

Subject to all applicable laws, the Chrysler Museum will be permitted to enter upon the property and to make certain uses of the property. The City has determined that maintenance, rehabilitation, or alteration of the Smith Rogers Hall building located at the property for any use by the City or the Museum is not economically feasible or desirable. Demolition of the building will be funded by Chrysler Museum.

V. Financial Impact

None.

VI. Environmental

There are no known environmental issues associated with the parcels subject to the Right of Entry except that the building to be demolished is believed to contain asbestos.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services and the City Attorney's Office.

Supporting Material:

- EXHIBIT A-Right of Entry between City and CMA.v2 MGF REVISIONS (PDF)

Form and Correctness Approved: *BAP*

Contents Approved:



By: _____
Office of the City Attorney



By: _____
DEPT. General Services

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE APPROVING A RIGHT OF ENTRY BETWEEN THE CITY OF NORFOLK, AS GRANTOR, AND THE CHRYSLER MUSEUM OF ART, INCORPORATED, AS GRANTEE, FOR PROPERTY LOCATED AT 358 MOWBRAY ARCH, 720 AND 740 BOTETOURT STREET IN THE CITY OF NORFOLK, VIRGINIA AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE RIGHT OF ENTRY ON BEHALF OF THE CITY OF NORFOLK.

- - -

WHEREAS, the City holds title to certain property located at 358 Mowbray Arch, 720 and 740 Botetourt in the City of Norfolk previously known as Smith Rogers Hall (the "Property"); and

WHEREAS, the City and Chrysler Museum of Art, Incorporated (the "Museum") have determined that maintenance, rehabilitation, or alteration of the Smith Rogers Hall building located at the Property for any use by the City or the Museum is not economically feasible or desirable; and

WHEREAS, the Museum desires to maintain, beautify, and use the Property for the benefit of the citizens of Norfolk consistent with its artistic and educational mission; and

WHEREAS, the parties desire to enter into this Right

of Entry to clarify the rights and obligations of the City and of the Museum concerning the Property for the term of this Right of Entry; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Right of Entry Agreement between the City of Norfolk and Chrysler Museum of Art, Incorporated, a copy of which is attached hereto as Exhibit A, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Agreement on behalf of the City and to do all things necessary and proper in furtherance thereof.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

EXHIBITS:

Exhibit A - Right of Entry (7 pages)

RIGHT OF ENTRY

THIS RIGHT OF ENTRY, made and entered into as of the 29th day of August, 2023, by and between the **CITY OF NORFOLK** (“City”), a municipal corporation of the Commonwealth of Virginia, Grantor, and **CHRYSLER MUSEUM OF ART, INCORPORATED** (“Chrysler Museum” or “Museum”), a Virginia nonstock corporation, Grantee.

WITNESSETH:

WHEREAS, the City owns certain properties located at 358 Mowbray Arch, 720 and 740 Botetourt Street in the City of Norfolk previously known as Smith Rogers Hall (the “Property”); and

WHEREAS, the City and the Museum entered into a Right of Entry Agreement dated March 28, 2023 for the Property; and

WHEREAS, the parties have determined that maintenance, rehabilitation, or alteration of the Smith Rogers Hall building located at the Property for any use by the City or the Museum is not economically feasible or desirable; and

WHEREAS, the Museum desires to maintain, beautify, and use the Property for the benefit of the citizens of Norfolk consistent with its artistic and educational mission; and

WHEREAS, the parties desire to enter into this new Right of Entry to clarify the rights and obligations of the City and of the Museum concerning the Property for the term of this Right of Entry;

NOW, THEREFORE, in consideration of the following and other good and valuable consideration, the receipt of sufficiency of which are hereby acknowledged, the City hereby grants to the Museum, its contractors and consultants, permission to enter upon and use the Property for the purposes set forth herein upon the following terms and conditions:

1. The term of this Right of Entry shall commence upon October 1, 2023 and shall continue until the earlier of (a) termination of this Right of Entry by either party hereto, (b) September 30, 2024, or (c) the date of the execution of a lease agreement between the City and the Museum for the Property (the “Term”). The Museum acknowledges that the permission granted herein is a license only and is subject to revocation by the City at any time in its sole discretion. The Museum shall have the right to enter upon the Property for the purposes set forth herein.

2. The City shall cause the existing “Smith Rogers Hall” building on the Property (the “Building”) to be demolished. The City shall use commercially reasonable efforts to cause the Building to be demolished no more than one hundred twenty (120) days following passage of an ordinance by the City accepting a donation from the Museum for the estimated cost of demolition, including all associated permits, fees, inspections, asbestos abatement, site restoration, and other costs associated therewith. The City shall provide the Museum with such estimated costs as soon as practicable after execution of this Right of Entry.

3. Upon demolition of the Building, the Museum shall maintain the former Building pad site as a green space consistent with the remainder of the Property at its sole expense.

4. The Museum shall be responsible for maintenance of the Property to include grass cutting and landscaping.

5. Subject to all applicable laws, the Museum may install landscaping and artwork at the Property consistent with enjoyment of the Property as green space associated with the Museum and consistent with the Museum’s artistic and education mission.

6. Subject to all applicable laws, the Museum may further improve the existing parking areas of the Property including but not limited to the installation of lighting, landscaping,

and walkways. Museum visitors, contractors, and employees shall be permitted to use the parking areas.

7. The Museum shall exercise reasonable care in the performance of any improvements to the Property. Any improvements to the Property shall be completed in a good and workmanlike manner and shall comply with all applicable laws.

8. Any costs associated with violations of the law, including but not limited to, remediation, clean-up costs, fines, administrative or civil penalties or charges, and third-party claims imposed on the City by any regulatory agency or by any third-party as a result of the noncompliance with applicable Federal, State or local environmental laws, regulations or nuisance statutes by the Museum, or by any of its contractors, subcontractors, consultants or sub-consultants, in connection with the work at the Property or other activities contemplated herein, shall be paid by the Museum.

9. The Museum, at its own cost and expense, shall take out and keep in full force and effect insurance that provides coverage against liability from claims, actions and suits that may be asserted or brought against the City and/or the Museum, and their successors and assigns, for any injury to, or death of any person or persons, or for any damage to, or destruction of property resulting from the Museum's use of the Property, with evidence of such insurance being provided to the City of the following:

(a) COMMERCIAL GENERAL LIABILITY (CGL) with a limit of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. CGL will cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under this Right of Entry.

(b) WORKER'S COMPENSATION INSURANCE providing coverage as required by applicable Federal and/or States' statutes, and Employer's Liability Insurance. The limits of such policies will be at least \$500,000 per accident/disease, and policy limit of \$500,000.

(c) AUTOMOBILE/MOTOR VEHICLE LIABILITY INSURANCE with a limit of not less than \$2,000,000 combined single limit; or bodily injury \$1,000,000 each person, \$2,000,000 accident, and property damage \$100,000 each accident. Such insurance must cover liability arising from any motor vehicle as defined by Commonwealth of Virginia laws and must include coverage for owned, hired and non-owned motor vehicles, as well as uninsured and underinsured motorists.

(d) All insurance policies affected by this Right of Entry will be primary and noncontributory to any other insurance or self-insurance maintained by the City, and will be written in an ISO form approved for coverage in the Commonwealth of Virginia. Policy limits may be met via either a singular policy, or in combination with primary and excess/umbrella insurance policies. Unless otherwise specifically approved by the City, all policies will include the City and its employees as "Additional Insured" and be written as an "occurrence" based policy.

10. The City shall not be responsible or liable for injuries to persons, including death or damage to property, when such injuries or damages are caused by or result from the Museum's use of the Property under the terms of this Right of Entry, and the Museum agrees to indemnify and hold harmless the City from and against any and all claims, demands, suits, actions, and judgments of any kind or nature whatsoever, including costs and expenses, for any personal injury or property damage to any person, or the Property, arising or resulting, directly or indirectly, from the Museum's use of and entry upon the Property under this Right of Entry. The preceding indemnity obligation shall survive termination of this Agreement.

11. The Right of Entry granted herein is not exclusive. The City shall have access to the Property at all times. The City shall have the right to make periodic inspections of the manner in which the Museum is using the Property.

12. This Right of Entry shall not be assigned by the Museum.

13. In exercising the rights granted hereby and undertaking any activity pursuant to this Right of Entry, the Museum shall act in accordance with the laws of the Commonwealth of Virginia, the City of Norfolk, and any other governmental body having jurisdiction over such matters. This Right of Entry shall be governed by the laws of the Commonwealth of Virginia. Venue, in the event of a dispute under this Right of Entry, shall be in the state courts of the City of Norfolk Virginia.

14. This Right of Entry may be executed in one or more counterparts and each such counterpart shall be deemed to be an original. All counterparts so executed shall constitute one instrument and shall be binding on all of the parties to this Amendment notwithstanding that all of the parties are not signatories to the same counterpart.

15. The Right of Entry Agreement between the City and the Museum dated March 28, 2023, is hereby terminated and shall be of no further force or effect except for any indemnity obligations and other provisions which by their terms survive the expiration or sooner termination of the agreement.

[Signature pages to follow]

[Signature page to Right of Entry - City of Norfolk /Chrysler Museum of Art, Incorporated – 358 Mowbray Arch, 720 and 740 Botetourt Street, Norfolk, VA]

IN WITNESS WHEREOF, the parties hereto have caused this Right of Entry to be executed by their duly authorized officials as of the day and year first above written.

**THE CHRYSLER MUSEUM OF ART,
INCORPORATED**

By: _____

Name: _____

Title: _____

[Signatures continue on next page]

[Signature page to Right of Entry - City of Norfolk /Chrysler Museum of Art, Incorporated – 358
Mowbray Arch, 720 and 740 Botetourt Street, Norfolk, VA]

CITY OF NORFOLK

By: _____
Name: Patrick G. Roberts
Title: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Deputy City Attorney